No. 864 30

Supreme Court of the United States.

OCTOBER TERM, 1942.

MERCHANTS NATIONAL BANK OF BOSTON,
EXECUTOR,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

AND

BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable Justices of the Supreme Court of the United States:

The petitioner, Merchants National Bank of Boston, executor of the will of Ozro Miller Field, late of Beverly, Massachusetts, prays that a writ of certiorari may issue to review the decree of the Circuit Court of Appeals for the First Circuit entered December 30, 1942, in the case between the above-named parties, docketed therein as No. 3787. Said decree reversed a decision of the United States Board of Tax Appeals dealing with the exemption, under both federal estate and income tax laws, of gifts to charity.

Opinions Below.

The findings and opinion of the Board of Tax Appeals are reported in 45 B.T.A. 270, and printed in the Record, pp. 26-31. The opinion of the Circuit Court of Appeals is reported in 132 Fed. (2d) 483, and is printed in the Record, pp. 63-69.

Jurisdiction.

This Court has jurisdiction to review said decree under U.S. Code, Title 28, Sec. 347.

This application is made within three months after the entry of such decree, as required by Sec. 350.

Questions Presented.

1. Is the value of a remainder bequeathed to charity deductible from the gross estate in determining federal estate tax where the trustee has discretionary power to invade principal for the comfort, support, maintenance and/or happiness of the decedent's widow, and the age and circumstances of the widow and the amount of the resources available for her make any invasion a mere possibility?

2. Are capital gains accruing to such residue in 1937 deductible in determining the income tax of the estate for that year?

Statutes Involved.

The statutes involved are the Revenue Act of 1926, Sec. 303, and Revenue Act of 1936, Secs. 23 and 162. The relevant parts of these statutes are set out in the appendix (*infra*, pp. 18, 19).

Statement.

The facts are not in dispute. Article Third of the will of Ozro Miller Field leaves the residue of his estate to The Merchants National Bank of Boston in trust to pay the net income quarter-annually or oftener in the discretion of the trustee to the decedent's wife, May L. Field, during the term of her natural life. The article then contains the following paragraph:

> "My said Trustee shall also have the right to pay to, or for the benefit of my said wife, May L. Field, such sum or sums from the principal of the trust fund and at such time or times as my said Trustee shall in its sole discretion deem wise and proper for the comfort, support, maintenance, and/or happiness of my said wife, and it is my wish and will that in the exercise of its discretion with reference to such payments from the principal of the trust fund to my said wife, May L. Field, my said Trustee shall exercise its discretion with liberality to my said wife, and consider her welfare, comfort and happiness prior to claims of residuary beneficiaries under this trust."

Upon Mrs. Field's death the trust fund, except for $100,000, is to go to charitable beneficiaries. The trustee is to retain a fund of $100,000 and to pay the income thereof one-quarter to each of the testator's three adopted children for life and one-quarter to Mrs. Field's niece for life. One-quarter of this $100,000 fund is to go, as each beneficiary dies, to the charitable beneficiaries (Ex. 4; R. 41, 53-59).

The charitable beneficiaries are corporations of such character as to render gifts to them deductible under both the estate and income tax laws. The value of the prospective life interests of the four beneficiaries of the $100,000

fund has been computed and the tax thereon is provided for in the decision of the Board of Tax Appeals (R. 28).

The decedent, who died May 3, ~~1936~~ 1936, had been engaged in the clothing business. He appreciated that much of his fortune had been made from the public, and he and his wife, May, agreed that the money should go back to the public as much as possible. They made their wills simultaneously, leaving the remainder interests in their residuary estates to charities (R. 28, 45).

The decedent and his wife had lived prior to his death in an apartment in Beverly, Massachusetts, and in Mrs. Field's country home in Buckland, Massachusetts. They had no children. Mr. Field had been married before. He had no children by his first marriage, but he had adopted three children—two girls and a boy. These children have not been adopted by Mrs. Field. At the time of Mr. Field's death the two girls, Deborah, twenty-seven, and Elizabeth, twenty-seven, were married to husbands capable of supporting them, and the boy, Robert, was almost twenty-one (R. 27, 42). Besides these children, Mrs. Field had relatives—her niece, Deborah L. Russell, whose husband was living at the time, and her niece's children, one a boy in medical school and the other a girl, Elizabeth, who in turn was married and had two little girls. It was costing Mr. and Mrs. Field about $6000 a year to live and the mode of life in which she was living was very comfortable and satisfactory to Mrs. Field (R. 28, 42, 44, 45).

Mr. Field from time to time had given Mrs. Field money and securities; and she also had money of her own and securities she had purchased herself. The value of this property, which was all liquid and substantially all invested in income-producing securities, was $104,398.33. In addition she owned the country estate in Buckland (R. 27, 43).

The gross estate of the decedent, as determined by the Commissioner, amounted to $366,527.66 (R. 24); and the prospective estate net after all deductions and taxes was $273,820.02. This, together with the $104,398.33 of Mrs. Field's own, made the total prospective resources in cash and income-producing securities available to her amount to $378,218.35.

In 1937 securities of the estate were sold resulting in a net capital gain of $100,900.31 (R. 14, 29).

At the time of her husband's death Mrs. Field was sixty-seven years old (R. 27, 41). Since her husband's death she has lived comfortably. Her personal expenses have been between $6000 and $7000 a year (R. 28, 43), not including taxes or non-recurring expenses. Such additional expenditures, including a fur coat costing $2250, trips to Nassau and Bermuda costing $800 apiece, and taking care of those having natural claims upon her (R. 28, 29, 44, 45), amounted on the average to about $5000 a year (Ex. 3; R. 39, 51). She has been able to do whatever she wanted to do for her relatives within the amount she has spent (R. 29, 45). She has never asked for any of the principal of her husband's estate and does not intend to ask for any of it (R. 28, 46). The following table shows the amounts of income available and the total expenditures of Mrs. Field by periods (R. 28; Ex. 1, 3; R. 38, 39, 47, 49):

Period	Income	Expenditures
1936 (7 months)	$10,735.35	$ 1,853.99
1937	24,738.57	10,357.91
1938	17,480.85	11,055.91
1939	17,448.23	12,024.92
1940	16,959.66	13,389.31
Total	$87,362.66	$48,682.04

Of the income available to her she has saved about $44,000 (R. 28, 46). The estate has been holding about $41,000 uninvested (R. 28). The value of the capital held by the respondent increased from $279,764.79 at the date of death to $366,046.33 on December 31, 1940 (R. 29; Ex. 2; R. 39, 49).

The executor in its estate tax return claimed a deduction of $128,276.94, representing the value of the remainder interest in the residue, and in its income tax return for 1937 claimed a deduction of $100,900.31, representing the capital gains.

The Commissioner of Internal Revenue disallowed these deductions and determined resulting deficiencies in estate tax and income tax. The proceedings in the Board of Tax Appeals to contest such determinations were consolidated.

The Board of Tax Appeals allowed the deductions (R. 31) on the authority of *Ithaca Trust Company* v. *United States*, 279 U.S. 151, and *Helen G. Bonfils et al., Executors*, and *F. G. Bonfils Trust*, 40 B.T.A. 1079 and 1085, affirmed (C.C.A. 10), 115 Fed. (2d) 788.

The Circuit Court of Appeals for the First Circuit reversed the decision of the Board upon the ground that the case was governed by *Gammons* v. *Hassett* (C.C.A. 1), 121 Fed. (2d) 229, rather than by *Ithaca Trust Company* v. *United States*, 279 U.S. 151, and decisions in other Circuits which follow the *Ithaca Trust Company* case.

Specification of Errors

1. The Court erred in not following the decision of this Court in *Ithaca Trust Company* v. *United States*, 279 U.S. 151.

2. The Court erred in announcing a rule of strict construction of the charitable deduction provisions of the es-

tate and income tax laws at variance with the construction in favor of the charities which has been adopted in the Second, Fifth, Eighth, Ninth and Tenth Circuits [1] in conformity with the *Ithaca Trust Company* case.

3. The Court erred in holding that the case was governed by *Gammons* v. *Hassett*, 121 Fed. (2d) 229, certiorari denied, 314 U.S. 673, which case is plainly distinguishable.

4. The Court erred in disregarding the statements of the Board (which were justified by the evidence) that the standard of maintenance fixed by Mr. Field was capable of being stated in fairly definite terms of money; that the income at the death of the testator was more than sufficient to maintain the widow as required, and there was no uncertainty as to future sufficiency appreciably greater than the general uncertainty that attends human affairs (R. 30); and that the possibility of invasion was sufficiently remote to justify the deductions claimed, and substituting its own view that the requirements of the life tenant were unmeasurable, and the amounts going to the charitable legatees were uncertain and unascertainable at the death of the testator (R. 67).

Reasons for Granting the Writ.

As a result of the errors just specified, the decision below not only wrongfully deprives the charities of money which has been given to them, but instates in the First Circuit the

[1] *Hartford-Connecticut Trust Company* v. *Eaton*, 36 Fed. (2d) 710 (C.C.A. 2);
First National Bank of Birmingham v. *Snead*, 24 Fed. (2d) 186 (C.C.A. 5).
Lucas v. *Mercantile Trust Company*, 43 Fed. (2d) 39 (C.C.A. 8).
Commissioner v. *Bank of America, Exr.*, Feb. 25, 1943 C.C.H. Estate Tax Service, ¶ 10,018.
Commissioner v. *F. G. Bonfils Trust*, 115 Fed. (2d) 788 (C.C.A. 10).

very rule of strict construction which was advanced by the Court of Claims in the *Ithaca Trust Company* case [2] and was rejected by the Supreme Court.[3] This rule of strict construction, moreover, is contrary to what, in due conformity to the *Ithaca Trust Company* case, has been stated in five other Circuits [4] in similar cases and by the Board of Tax

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[2] *Ithaca Trust Company* v. *United States*, 68 Ct. Cl. 686:

> "Without entering into a discussion of what limitations there were, if any, on expenditure by the life tenant 'to suitably maintain her in as much comfort as she now enjoys,' it is evident that the failure of investments, the diminution of the income, the high cost of living, and the changing ideas of what constitutes comfort might well absorb a good part, and possibly all, of the principal sum and leave no balance for charity, and that a contingency permeates the gifts to charity which may prevent any of them from ever going into possession and enjoyment. The gifts for charitable and religious purposes, therefore, did not take effect upon the death of the testator or upon the happening of an event which would certainly occur, and consequently, within the meaning of the statute, could not be deducted from the gross estate. In view of the case, the plaintiff is not entitled to recover . . ."

Compare opinion below (R. 68):

> "Assuming then that she is able to convince the trustee that her happiness requires expenditures of sums of money beyond the income and out of the corpus of the trust, the amount that ultimately would go to the charity would be uncertain."

[3] The Attorney General was unwilling to argue in favor of this construction. From the government's brief:

> "If the widow was given an unrestrained right to use the principal in her discretion, the amount of the bequests to charity would be entirely speculative. . . . Whatever limit of judgment and discretion was allowed was vested not in the widow alone, but in the executrix and executor acting together. No large discretion was allowed. The use of only such amounts as might be 'necessary to suitably maintain her in as much comfort as she now enjoys' was permitted. That provision imposed a definite restraint on the use of the principal . . ."

[4] See footnote 1, p. 7.

Appeals. The efforts of the Court below to distinguish this case from such cases and to liken it to the *Gammons* case will not convince taxing authorities, taxpayers and lawyers that a different rule does not now apply in the First Circuit in the case of charitable trusts than elsewhere.[5]

We submit that the decision below is in conflict with the decisions of other Circuit Courts of Appeals and that there is reason to believe it is in conflict with an applicable decision of this Court. We urge that the writ issue to resolve such conflicts and to keep uniform the construction and application of the provisions in favor of charity in our estate and income tax laws.

Respectfully submitted,

EDWARD C. THAYER,
Attorney for Petitioner.

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[5] The Circuit Court of Appeals for the First Circuit apparently feels committed to the strictest construction where exemptions in favor of charity are concerned. *Cf.* comment on its decisions in the *Gammons* case and in this case by C.C.A. 9 in *Commissioner* v. *Bank of America, Exr.*, Feb. 25, 1943, C.C.H. (Est.) ¶ 16,018.

In *Old Colony Trust-Company* v. *Commissioner*, 301 U.S. 379, a very severe construction of the charitable deduction provisions was overruled by this Court.

In the *Gammons* case it was said by Judge Magruder, in his concurring opinion:

> "The *Ithaca Trust Company* case must be considered to be going to the very verge of the law and in the absence of guidance from the Supreme Court we ought not to extend the doctrine of that case, however logical and appealing the extension might be under the particular facts."

We know of nothing like this in the opinions of other Circuit Courts of Appeal or of this Court.

It was not necessary to question the *Ithaca Trust Company* case in order to decide *Gammons* v. *Hassett* (see Brief, *infra*, p. 13).

BRIEF IN SUPPORT OF THE PETITION FOR CERTIORARI.

1. The Rule in the Ithaca Trust Company Case is Applicable to This Case.

The *Ithaca Trust Company* case, involving the estate and will of Edwin C. Stewart, closely resembles this case in the size of the estate, the purpose and character of the provisions of the will, and the age and station and mode of life of the widow.[1] The Court of Claims took the position that, because a *possibility* existed that the corpus might be used, the gifts to charity did not take effect upon an event which was *certain* to occur, and consequently were not deductible. That construction was rejected by this Court. In the opinion—279 U.S. 151—it was said (per Holmes, J.) on the question of whether the provisions for the maintenance of

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[1] The residuary estate amounted to $312,244.51. The will provided:

> "I also authorize my wife, Annie L. Stewart, to use any additional sum from the principal of my estate which may be necessary to suitably maintain her in as much comfort as she now enjoys."

Mrs. Stewart was sixty-one years old at the date of Mr. Stewart's death. The Circuit Court of Appeals found—*Ithaca Trust Company* v. *United States*, 68 Ct. Cl. 686:

> "XIII. For many years prior to the death of said Edwin C. Stewart, he and his widow, Annie L. Stewart, lived in Ithaca, New York, in a simple and unpretentious style, spending each year less than the income produced by the estate of said testator; and the income from the estate of said testator was, at his death, and during the life of the widow, in excess of the sum necessary to maintain her suitably in as much comfort as she enjoyed at any time during the lifetime of said testator. After the payment of debts and the specific legacies, the estate produced an income in excess of the sum necessary, in the absence of unusual circumstances, to maintain her suitably in as much comfort as she enjoyed at any time during the lifetime of the said testator."

the wife made the gifts to charity so uncertain that the deduction could not be allowed:

> "The principal which could be used was only so much as might be necessary to continue the comfort then enjoyed and the standard was fixed in fact and capable of being stated in definite terms of money. It was not left to the widow's discretion. The income of the estate at the death of the testator, and even after debts and specific legacies had been paid, was more than sufficient to maintain the widow as required. There was no uncertainty appreciably greater than the general uncertainty that attends human affairs."

Under the rule so announced the beneficent policy of Congress in favor of charitable deductions [2] did not have to be defeated because it was theoretically possible that under greatly changed conditions, wholly unforeseeable, invasion of principal might occur. Although that possibility existed, it was evaluated in the light of the facts of the particular case and found to be unimportant. The Board of Tax Appeals followed the *Ithaca Trust Company* case and made a similar evaluation in this case with the same result. This evaluation was ignored by the Circuit Court of Appeals.

The only distinction asserted between the *Ithaca Trust Company* case and this case lies in the use by Mr. Field of the additional words "and or happiness" and his injunction to the trustee to exercise the discretion with liberality to Mrs. Field. The language used by Mr. Field was used for the same purpose as that used by Mr. Stewart. In both cases it was a mere protective measure. It was used with reference to a standard of living long enjoyed and which was "very comfortable and satisfactory" to Mrs. Field (R. 43).

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[2] *Edwards* v. *Slocum*, 265 U.S. 61.
United States v. *Provident Trust Company*, 291 U.S. 272.
Helvering v. *Bliss*, 293 U.S. 144.

The direction for exercise of liberality was with reference to that ascertainable standard. Variation of forms of expression used have been held in other Circuits to have no controlling effect.[3] It would be unfortunate that the taxa-

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[3] *Hartford-Connecticut Trust Company* v. *Eaton*, 36 Fed. (2d) 710 (C.C.A. 2).

The power was to pay over principal which the trustee might deem necessary and advisable for the wife's comfortable maintenance and support. This was construed as intended only to secure to the beneficiary the kind of living to which she was used, the trustee was limited to the support of the widow according to her station in life, that is according to her wont.

Lucas v. *Mercantile Trust Company*, 43 Fed. (2d) 39 (C.C.A. 8), affirming the decision of the Board of Tax Appeals, *sub nom. Mercantile Trust Company, Executor*, 13 B.T.A. 85.

In this case the trustee was directed to pay to the wife all the net income—

> "or if need be, such part of the corpus thereof as may be necessary for the comfort, maintenance, and support of my wife during her life. A request in writing to the trustee made by my wife stating that the sum requested by her is needed for her comfort, maintenance and support shall be authority to my trustee to pay unto her any sum so requested out of the corpus."

Per Kenyon, Cir. J.:

> "If the will had said, as in the Ithaca Trust Company Case, 'that may be necessary to suitably maintain her in as much comfort as she now enjoys,' the cases would have been parallel, but considering all the terms of this will, the result is the same. Some one must determine what the term 'if need be' means; also what the phrase, 'may be necessary for the comfort, maintenance and support of my wife during her life,' means, and the one to determine that within reasonable bounds was the trustee. If a trustee, upon a mere written notice of the widow that she needed the entire corpus of the estate for her comfort, maintenance, and support, should turn over the same to her, it would, in our judgment, be guilty of a dereliction of duty."

Commissioner v. *Bank of America, Exr.*, Feb. 25, 1943, C.C.H. (Est.) ¶ 10,018. The direction was to pay sister $250 a month "... and in case she should, by reason of accident, illness, or

bility of charitable remainders should depend upon the precise form of words used *unless, indeed, the variation introduces material uncertainty in the particular case as to whether the legacy is going to go to charity.* The use of the word "happiness" did not wrest discretion from the trustee and confer it upon Mrs. Field. To suggest that she might conceivably importune the trustee to subsidize some very extravagant mode of life bearing no relation to that which she had formerly enjoyed with her husband is to make the same purely theoretical kind of objection, regardless of the facts which existed, as was made by the Court of Claims in the *Ithaca Trust Company* case. As found by the Board of Tax Appeals, the wording used did not materially increase the probability of the gifts not taking effect.

2. The Gammons Case is Plainly Distinguishable from This Case.

Gammons v. *Hassett* was an entirely different kind of case. It was a case where the life tenant had absolutely unrestricted power to invade corpus.[4] As is recognized in

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other unusual circumstance so require, such additional sum or sums as in the judgment of said trustee may be necessary and reasonable under the existing conditions." The will disclosed that his sister's welfare was uppermost in the maker's mind.

[4] The Supreme Judicial Court of Massachusetts, in *Dana* v. *Dana*, 165 Mass. 156, held that under similar limitations (except that the estate was legal instead of equitable) the discretionary power of the wife to spend the principal was unlimited so that she was entitled to give it away, although she had a large private fortune of her own. Per Bailey, J.:

> "He gave to his wife during his lifetime an absolute and ample power to dispose of the estate possessed as would be possessed by an owner in fee."

It cannot conceivably be considered that Mrs. Field had any such unrestricted right, or that the trustee had.

the Ithaca Trust Company opinion, a case where the life tenant has powers tantamount to ownership in fee, and the gift over is subject to his whim, is entirely different from our case and the *Ithaca Trust Company* case, where the discretion is lodged in a trustee under provisions imposing a definite restraint on the use of the principal. The degree of probability of exercise of a controlled and conditional power is capable of evaluation.

3. The Circuit Court of Appeals Failed to Apply the Rule in the Ithaca Trust Company Case.

It is plain from the opinion below that the Court did not in reality distinguish the *Ithaca Trust Company* case. The Circuit Court of Appeals was not at all interested in the evaluation which the Board of Tax Appeals made of the possibility of invasion of corpus. It did not ascertain that the evaluation did not accord with the facts and was not fully supported by the evidence. It was not interested in the facts at all and made no attempt to determine whether the uncertainty that the charities would take was appreciably greater than the general uncertainty that attends human affairs, as it should have done if it had been applying the rule in the *Ithaca Trust Company* case. In fact, the Circuit Court of Appeals, in so many words, refused to consider that question at all, because under its erroneous application of the *Gammons* case it concluded that whether or not there was any real doubt of the remainders going, augmented, to charity was a question with which it was not concerned. In its opinion, taxability is not made to depend on facts and probabilities, but on the words and expressions used.

4. Statements of Fact Made by the Board and Supported by Evidence should Not be Swept Aside.

The question of whether, in the premises, the powers given create tangible uncertainty as to whether the charities will take is essentially a factual one. On this question the Board of Tax Appeals made several statements, the gist of which was that an ascertainable standard had been established, that there was no uncertainty amounting to anything as to the future sufficiency of the income, that the possibility of invasion was sufficiently remote to justify the deductions claimed. These statements are perfectly reasonable. Few, it is submitted, would consider conditions had come to such a pass that a widow of the character and age of Mrs. Field would not in all human probability live out her life in comfort and happiness well within the income of a fortune of over a quarter of a million dollars (without reference to an estate of her own of over a hundred thousand). The Circuit Court of Appeals did not disagree with these statements (R. 67); it simply ruled that they did not make any difference.

We submit that whether or not the deductions can properly be allowed in these trust cases without impairment to the revenue which the statutes are designed to raise is essentially a question of fact, and that if they can be so allowed they ought to be in order to effectuate the plain purpose of the statute. This, we submit, is the rule in the *Ithaca Trust Company* case. It would seem that the area of application of the rule can better be worked out (as it is being worked out) [5] by a process of judicial inclusion and

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[5] Cf. *Boston Safe Deposit and Trust Company* v. *Commissioner*, 66 Fed. (2d) 179 (C.C.A. 1);
Farrington v. *Commissioner*, 30 Fed. (2d) 915 (C.C.A. 1);
Knocraychild v. *Commissioner*, 66 Fed. (2d) 401 (C.C.A. 7);

exclusion in which the function of Appellate Courts is to correct inferences from the evidence which are clearly improper in the particular cases than by substituting, as the Court of Appeals has done, a process of classifying words and expressions, and making the result depend upon the ones employed. Wills are frequently drawn by persons unskilled in the law, or in the niceties of tax law. Preoccupation with the word to the neglect of the substance is characteristic of primitive rather than enlightened jurisprudence.[5] The decision below marks a retreat from an objective achieved by the opinion in the *Ithaca Trust Company* case.

WHEREFORE the petitioner submits that the Circuit Court of Appeals for the First Circuit erred in its decision and

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Charles W. Jaynes et al., Trustees, 29 B.T.A. 259;
Old Colony Trust Company, Trustee, 33 B.T.A. 311—

in which it was held that the possibility of invasion was too substantial to permit the deduction, with—

Helen G. Bonfils et al., Executors, 40 B.T.A. 1079, and *F. G. Bonfils Trust*, 40 B.T.A. 1085, a companion case affirmed *sub nom. Commissioner* v. *F. G. Bonfils Trust*, 115 Fed. (2d) 788 (C.C.A. 10);
Sanderson, Executor, 18 B.T.A. 221;
Michigan Trust Company, 27 B.T.A. 556—

and the decision of this case in the Board of Tax Appeals, wherein it was held that the uncertainty of the remainder going to charity was so slight that the deduction could be allowed.

[5] *United States* v. *Provident Trust Company*, 291 U.S. 272.
City Bank Farmers' Trust Company v. *United States*, 74 Fed. (2d) 692 (C.C.A. 2).

These cases involved the deductibility of gifts over to charity on failure of issue to women who were found in fact unable to bear children. From the latter case, per A. N. Hand, Cir. J.:

> "We ought not to make an exemption in aid of charitable gifts depend on considerations that are wholly unreal and illusory."

that this petition for certiorari should be granted so that the decision can be reversed.

Respectfully submitted,

EDWARD C. THAYER,
Attorney for Petitioner.

Appendix.

Revenue Act of 1926, section 303:

"For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

. . . . . .

(3) The amount of all bequests, legacies, devises or transfers to or for the use of the United States, any state, territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, . . ." (See Internal Revenue Code, section 812(d).)

Revenue Act of 1936, section 23—Deductions from Gross Income:

"In computing net income there shall be allowed as deductions:

. . . . . .

(o) Charitable and Other Contributions.—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

. . . . . .

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . ."

. . . . . .

Section 162—NET INCOME:

"The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, . . ." (See Internal Revenue Code, sections 23(o) and 162(a).)